

**Introduced by Senator Wiggins**February 23, 2007

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An act to amend Sections 41825 and 41850 of, and to add Chapter 10 (commencing with Section 41979) to Part 2 of Division 30 of, the Public Resources Code, relating to solid waste.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1016, as introduced, Wiggins. Diversion: alternative compliance system.

The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components. Those entities are required to divert, from disposal or transformation, 50% of the solid waste through source reduction, recycling, and composting subject to the element, except as specified. The board is required to review each city, county, or regional agency source reduction and recycling element and household hazardous waste element at least once every 2 years and is required to issue an order of compliance, if the board finds the city, county, or regional agency has failed to implement those elements. The board, in determining whether or not to impose any penalties on a city or county for violations of specified solid waste reduction and recycling requirements imposed by the act, is required to consider whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

This bill would enact the Alternative Diversion Compliance System Act, and would define terms. The act would require each city, county,

and regional agency to implement the diversion programs set forth in its source reduction and recycling element, as specified. The bill would require the diversion programs in the source reduction and recycling element to prevent an increase in the countywide total tonnage of solid waste disposed by the cities in a county, and unincorporated area of the county, as compared to the base tonnage year, as defined, and would require the diversion programs to be implemented to prevent that increase. The board would be required to determine the tonnage of solid waste disposed of in each county and each regional agency, at least once every 2 years to determine whether or not the county has met the requirements regarding the prevention of an increase in the tonnage of waste disposed of in that county.

The bill would require each city, county, and regional agency to prepare an initial update of its source reduction and recycling element and the household hazardous waste element to reflect all diversion programs that the jurisdiction is implementing, based on a specified schedule. A city, county, and regional agency would also be required to prepare an initial update of its nondisposable facility element. The bill would provide a procedure for the board review of the update.

The bill would require a jurisdiction, if it determines that it needs to expand or add programs, or utilize additional nondisposal facilities, beyond those included in the initial update, to provide a programmatic or nondisposal facility update of its source reduction and recycling element and household hazardous waste element to the board, pursuant to a specified process.

A jurisdiction would be required, by September 1, 2009, and on or before September 1 every 2 years thereafter, to submit a report to the board, including information regarding the implementation of the diversion programs. The bill would require the board, on and after January 1, 2009, when the board conducts a compliance review, to additionally utilize specified criteria regarding compliance with the act's waste increase prevention requirements. The board would be required, in determining whether or not to issue a compliance order, to primarily consider whether the diversion programs are being implemented and would allow the board to consider a jurisdiction's compliance with the waste increase prevention requirements only as an indication as to whether the implementation requirements have been met. The bill would also require the board to consider specified factors in determining whether or not to issue a compliance order. The board

would be required to provide technical assistance and outreach to assist jurisdictions to comply with the act's requirements.

The bill would make conforming changes regarding the compliance order and related enforcement provisions. The bill would impose a state-mandated local program by imposing new duties upon local agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 41825 of the Public Resources Code is  
2 amended to read:

3 41825. (a) At least once every two years, the board shall review  
4 each city, county, or regional agency source reduction and recycling  
5 element and household hazardous waste element.

6 (b) If after a public hearing, which, to the extent possible, is  
7 held in the local or regional agency's jurisdiction, the board finds  
8 that the city, county, or regional agency has failed to implement  
9 its source reduction and recycling element or its household  
10 hazardous waste element, the board shall issue an order of  
11 compliance with a specific schedule for achieving compliance.  
12 The compliance order shall include those conditions that the board  
13 determines to be necessary for the local agency or regional agency  
14 to complete in order to implement its source reduction and  
15 recycling element or household hazardous waste element.

16 (c) (1) The board shall confer with a jurisdiction regarding  
17 conditions relating to a proposed order of compliance, with a first  
18 meeting occurring not less than 60 days before issuing a notice of  
19 intent to issue an order of compliance.

20 (2) The board shall issue a notice of intent to issue an order of  
21 compliance not less than 30 days before the board holds a hearing  
22 to issue the notice of compliance. The notice of intent shall specify  
23 all of the following:

24 (A) The proposed basis for issuing an order of compliance.

1 (B) Proposed actions that board staff recommends are necessary  
2 for the jurisdiction to complete in order to implement its source  
3 reduction and recycling element or household hazardous waste  
4 element.

5 (C) Proposed staff recommendations to the board.

6 (3) The board shall consider any information provided pursuant  
7 to subdivision (c) of Section 41821 if the proposed issuance of an  
8 order of compliance involves changes to a jurisdiction's calculation  
9 of annual disposal reduction.

10 (d) *On and after January 1, 2009, the board shall, when*  
11 *conducting a review pursuant to this section, consider the criteria*  
12 *specified in Section 41985.*

13 SEC. 2. Section 41850 of the Public Resources Code is  
14 amended to read:

15 41850. (a) Except as specifically provided in Section 41813,  
16 if, after holding the public hearing and issuing an order of  
17 compliance pursuant to Section 41825, the board finds that the  
18 city, county, or regional agency has failed to make a good faith  
19 effort to implement its source reduction and recycling element or  
20 its household hazardous waste element, the board may impose  
21 administrative civil penalties upon the city or county or, pursuant  
22 to Section 40974, upon the city or county as a member of a regional  
23 agency, of up to ten thousand dollars (\$10,000) per day until the  
24 city, county, or regional agency implements the element.

25 (b) ~~In~~ *Except as provided in subdivision (e), in determining*  
26 *whether or not to impose any penalties, or in determining the*  
27 *amount of any penalties imposed under this section, including any*  
28 *penalties imposed due to the exclusion of solid waste pursuant to*  
29 *Section 41781.2 that results in a reduction in the quantity of solid*  
30 *waste diverted by a city, county, or regional agency, the board*  
31 *shall consider whether the jurisdiction has made a good faith effort*  
32 *to implement its source reduction and recycling element or its*  
33 *household hazardous waste element. In addition, the board shall*  
34 *consider only those relevant circumstances that have prevented a*  
35 *city, county, or regional agency from meeting the requirements of*  
36 *this division, including the diversion requirements of paragraphs*  
37 *(1) and (2) of subdivision (a) of Section 41780, including, but not*  
38 *limited to, all of the following:*

39 (1) Natural disasters.

(2) Budgetary conditions within a city, county, or regional agency that could not be remedied by the imposition or adjustment of solid waste fees.

(3) Work stoppages that directly prevent a city, county, or regional agency from implementing its source reduction and recycling element or household hazardous waste element.

(4) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction on the host jurisdiction's ability to meet the requirements of paragraph (2) of subdivision (a) of Section 41780.

(c) In addition to the factors specified in subdivision (b), the board shall consider all of the following:

(1) The extent to which a city, county, or regional agency has implemented additional source reduction, recycling, and composting activities to comply with the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(2) The extent to which a city, county, or regional agency is meeting the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(3) Whether the jurisdiction has requested and been granted an extension to the requirements of Section 41780, pursuant to Section 41820.5, or an alternative requirement to Section 41780, pursuant to Section 41785 41786.

(4) Whether a local jurisdiction has provided information to the board concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(d) (1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its source reduction and recycling element or

1 household hazardous waste element, or alternative programs or  
2 activities that achieve the same or similar results.

3 (2) For purposes of this section “good faith effort” may also  
4 include the evaluation by a city, county, or regional agency of  
5 improved technology for the handling and management of solid  
6 waste that would reduce costs, improve efficiency in the collection,  
7 processing, or marketing of recyclable materials or yard waste,  
8 and enhance the ability of the city, county, or regional agency to  
9 meet the diversion requirements of paragraphs (1) and (2) of  
10 subdivision (a) of Section 41780, provided that the city, county,  
11 or regional agency has submitted a compliance schedule pursuant  
12 to Section 41825, and has made all other reasonable and feasible  
13 efforts to implement the programs identified in its source reduction  
14 and recycling element or household hazardous waste element.

15 (3) In determining whether a jurisdiction has made a good faith  
16 effort, the board shall consider the enforcement criteria included  
17 in its enforcement policy, as adopted on April 25, 1995, or as  
18 subsequently amended.

19 *(e) On and after January 1, 2009, the board shall also base its*  
20 *determination whether to impose any penalties or the amount of*  
21 *the penalties pursuant to this section upon a compliance order*  
22 *issued pursuant to the criteria specified in subdivision (b) of*  
23 *Section 41985, as provided in Section 41986.*

24 SEC. 3. Chapter 10 (commencing with Section 41979) is added  
25 to Part 2 of Division 30 of the Public Resources Code, to read:

26  
27 CHAPTER 10. ALTERNATIVE DIVERSION COMPLIANCE SYSTEM  
28

29 41979. (a) The Legislature finds and declares all of the  
30 following:

31 (1) The statewide diversion rate for the year 2005 is expected  
32 to exceed 50 percent, and jurisdictions throughout the state have  
33 set forth comprehensive arrays of programs to divert solid waste  
34 from disposal.

35 (2) Adjustments to the ways in which diversion achievements  
36 are measured and evaluated need to be implemented to make the  
37 system more accurate, simplify it, and add additional emphasis to  
38 the implementation of those diversion programs.

39 (b) This chapter shall be known and may be cited as the  
40 Alternative Diversion Compliance System Act.

1 (c) The requirements of, and authority provided by, this chapter  
2 are in addition to the requirements of, and authority provided by,  
3 this part.

4 (d) For purposes of this chapter, the following definitions shall  
5 apply:

6 (1) “Base tonnage year” means the countywide total tonnage  
7 of solid waste disposed of by all cities in a county and the  
8 unincorporated area of a county, or by the regional agency, during  
9 the year 2006, as determined by the board pursuant to subdivision  
10 (a) of Section 41984.

11 (2) “Diversion program” means the programs in the city or  
12 county source reduction and recycling element, including any  
13 amendments, revisions, or updates to the element, and any  
14 programs set forth in any time extensions issued pursuant to Section  
15 41820.5, alternative diversion requirements issued pursuant to  
16 Section 41820.5, or compliance orders issued pursuant to Section  
17 41825, that have the purpose of diverting solid waste from landfill  
18 disposal or transformation, through source reception, recycling,  
19 and compost activities.

20 (3) “Jurisdiction” means a city, county, or regional agency.

21 (4) “Local task force” means the task force convened pursuant  
22 to Section 40950.

23 (5) “Nondisposal facility” means a solid waste facility that is  
24 not a disposal or transformation facility.

25 (6) “Programmatic update” means the expansion or addition of  
26 diversion programs to the source reduction and recycling element.

27 (7) “Small rural county” means a county that disposes of less  
28 than 100,000 tons of solid waste annually.

29 (8) “Uniform Electronic Transactions Act” means Title 2.5  
30 (commencing with Section 1633.1) of Part 2 of Division 3 of the  
31 Civil Code.

32 41980. (a) Each city, county, and regional agency shall  
33 implement the diversion programs set forth in its source reduction  
34 and recycling element, including any amendments, revisions, or  
35 updates to the element, and any programs set forth in any time  
36 extensions, alternative diversion requirements, or compliance  
37 orders approved pursuant to this part.

38 (b) (1) The diversion programs in the source reduction and  
39 recycling element shall prevent an increase in the countywide total  
40 tonnage of solid waste disposed by the cities in a county, and

1 unincorporated area of the county, as compared to the base tonnage  
2 year.

3 (2) The diversion programs in the source reduction and recycling  
4 element shall be implemented to prevent an increase in the  
5 countywide total tonnage of solid waste disposed of by the cities  
6 in a county, and the unincorporated area of the county, as compared  
7 to the base tonnage year.

8 41981. (a) Each city, county, and regional agency shall prepare  
9 an initial update of its source reduction and recycling element  
10 prepared pursuant to Chapter 2 (commencing with Section 41000)  
11 or Chapter 3 (commencing with Section 41300), as applicable,  
12 and the household hazardous waste element prepared pursuant to  
13 Chapter 3.5 (commencing with Section 41500) to reflect all  
14 diversion programs that the jurisdiction is implementing on the  
15 date specified in subdivision (d). This initial update shall include  
16 all programs set forth in its source reduction and recycling element,  
17 including any amendments, revisions, or updates to the element,  
18 and any programs set forth in any time extensions, alternative  
19 diversion requirements, or compliance riders that were being  
20 implemented or planned to be implemented as of January 1, 2008.

21 (b) Each city, county, and regional agency shall prepare an  
22 initial update of its nondisposal facility element prepared pursuant  
23 to Chapter 4.5 (commencing with Section 41730) to reflect all  
24 nondisposal facilities that the jurisdiction is utilizing or is planning  
25 to utilize in implementing its diversion programs to comply with  
26 Section 41980.

27 (c) The initial updates required in this section are not subject to  
28 any requirements of this part that require the providing of public  
29 notice, comments, review by the local task force, or the conduct  
30 of a public hearing.

31 (d) The initial update required by this section shall be submitted  
32 to the board in accordance with the following schedule:

33 (1) On or before April 1, 2008, if the jurisdiction's name begins  
34 with the letters A to G, inclusive.

35 (2) On or before July 1, 2008, if the jurisdiction's name begins  
36 with the letters H to P, inclusive.

37 (3) On or before September 1, 2008, if the jurisdiction's name  
38 begins with the letters Po to Z, inclusive.

39 (e) The board shall presume that an initial update submitted  
40 pursuant to this section meets the requirements of this section,



1 unless the board determines that the update does not contain all of  
2 the information required by this section. If the board determines  
3 that a jurisdiction's initial update is deficient, the board shall notify  
4 the jurisdiction of the deficiencies it has identified within 60 days  
5 and the jurisdiction shall submit a new update within 30 days. If  
6 a jurisdiction does not resubmit an adequate initial update, the  
7 board may utilize the procedures set forth in Sections 41812 and  
8 41813.

9 (f) Notwithstanding the Uniform Electronic Transactions Act,  
10 the city, county, or regional agency shall submit the initial update  
11 electronically using the board's electronic reporting format system.

12 (g) After providing an initial update pursuant to this section, a  
13 jurisdiction shall provide updates pursuant to Section 41983.

14 41982. (a) If a jurisdiction determines that it needs to expand  
15 or add programs, or utilize additional nondisposal facilities, beyond  
16 those included in the initial update submitted pursuant to Section  
17 41981, to meet the requirements of subdivision (b) of Section  
18 41980, the jurisdiction shall provide a programmatic or nondisposal  
19 facility update of its source reduction and recycling element and  
20 household hazardous waste element to the board.

21 (b) The jurisdiction's determination regarding the need for the  
22 expansion or addition of programs, or to utilize additional  
23 nondisposal facilities, shall be made in accordance with the  
24 applicable local processes used in the jurisdiction, but is not subject  
25 to any requirements of the part that requires the providing of public  
26 notice, comments and review by the local task force, or the conduct  
27 of a public hearing.

28 (c) A jurisdiction may submit to the board a voluntary  
29 programmatic or nondisposal facility update at any time.

30 (d) The board shall acknowledge the receipt of a programmatic  
31 update submitted pursuant to subdivision (a), but shall not review  
32 and approve the update at the time of submittal. The board shall  
33 evaluate any expanded or additional programs submitted pursuant  
34 to subdivision (a) only as part of the biennial review as set forth  
35 in subdivision (e) of Section 41985.

36 (e) The addition of a nondisposal facility update shall be  
37 approved by the board in accordance with Section 41800.

38 (f) Notwithstanding the Uniform Electronic Transactions Act,  
39 the jurisdiction shall submit the programmatic or nondisposal

1 facility update electronically to the board using the board's  
2 electronic reporting format system.

3 41983. (a) On or before September 1, 2009, and on or before  
4 September 1 every two years thereafter, a jurisdiction shall submit  
5 a report to the board which shall include all of the following  
6 information:

7 (1) A summary of the jurisdiction's implementation of diversion  
8 programs set forth in its source reduction and recycling element  
9 and the programs set forth in household hazardous waste element.

10 (2) An update of the jurisdiction's source reduction and  
11 recycling element and household hazardous waste element to  
12 include any new or expanded programs that jurisdiction has  
13 implemented or plans to implement.

14 (3) An update of the jurisdiction's nondisposal facility element  
15 to reflect all new or expanded nondisposal facilities the jurisdiction  
16 is using or planning to use.

17 (4) The information required by Section 41821.

18 (b) The information in the report required by this section shall  
19 encompass the previous two calendar years from January 1 to  
20 December 31, inclusive.

21 (c) In addition to the requirements of subdivision (a), if the  
22 county in which the jurisdiction is located fails to meet the  
23 requirements of subdivision (b) of Section 41980, the biennial  
24 report may include information as to why this has occurred, other  
25 than a failure to implement the diversion programs, including, but  
26 not limited to, all of the following:

27 (1) The rural nature of the jurisdiction.

28 (2) Growth rate within the jurisdiction.

29 (3) Any waste generation or other studies done that show the  
30 effectiveness of the programs being implemented.

31 (4) Other information describing the good faith efforts of the  
32 jurisdiction.

33 (d) Notwithstanding the Uniform Electronic Transactions Act,  
34 the biennial report shall be submitted electronically using the  
35 board's electronic biennial reporting format system.

36 41984. (a) The board shall determine the tonnage of solid  
37 waste disposed of in each county and each regional agency in the  
38 year 2006.

1 (b) At least once every two years, the board shall determine  
2 whether or not each county has met the requirements of subdivision  
3 (b) of Section 41980.

4 41985. (a) On and after January 1, 2009, when the board  
5 conducts a review pursuant to subdivision (a) of Section 41825,  
6 the board shall also utilize the following criteria:

7 (1) If the board finds that the county is in compliance with the  
8 requirements of subdivision (b) of Section 41980, the board shall  
9 conduct a review of program implementation to determine if each  
10 city, county, and regional agency within the county has  
11 implemented the diversion programs required by subdivision (a)  
12 of Section 41980. The board shall presume that the county complies  
13 with Section 41980, which presumption may be rebutted.

14 (2) Except as provided in paragraph (3), if the board finds the  
15 county is not in compliance with the requirements of subdivision  
16 (b) of Section 41980, the board shall conduct a review of the  
17 effectiveness of the implementation of the diversion programs and  
18 shall determine if the diversion programs of each city, county, and  
19 regional agency within the county are adequately addressing all  
20 significant sources of disposal to achieve compliance with  
21 subdivision (b) of Section 41980. The board shall presume that  
22 the county is not in compliance with the requirements of Section  
23 41980, which presumption may be rebutted.

24 (3) The board shall review the diversion program implemented  
25 by a small rural county and shall determine if each city, county,  
26 and regional agency within the county has implemented the  
27 diversion programs required by subdivision (a) of Section 41980.  
28 If the board makes this finding, the board shall presume that the  
29 county complies with Section 41980, which presumption may be  
30 rebutted.

31 (b) In determining whether or not to issue a compliance order  
32 pursuant to Section 41825, the board may issue a compliance order  
33 only if the board determines that the jurisdiction has failed to make  
34 a good faith effort pursuant to subdivision (d) of Section 41850,  
35 to implement its source reduction and recycling element or its  
36 household hazardous waste element.

37 (1) In making a determination pursuant to this section, the board  
38 shall primarily consider whether the diversion programs are in  
39 compliance with subdivision (a) of Section 41980 and whether

1 additional program implementation is necessary to adequately  
2 address all significant sources of disposal.

3 (2) In making a determination pursuant to this section, the board  
4 may consider a jurisdiction's compliance with the requirements  
5 of subdivision (b) of Section 41980 only as an indication of  
6 whether the requirements of subdivision (a) of Section 41980 have  
7 been met. The board shall not consider a jurisdiction's compliance  
8 with subdivision (b) of Section 41980 determinative as to whether  
9 the jurisdiction has failed to make a good faith effort pursuant to  
10 subdivision (d) of Section 41850, to implement its source reduction  
11 and recycling element or its household hazardous waste element.

12 (c) In addition to considering the good faith efforts to implement  
13 a diversion program, the board shall consider all of the following  
14 factors in determining whether or not to issue a compliance order  
15 pursuant to Section 41825:

16 (1) The rural nature of the jurisdiction.

17 (2) Whether exceptional growth rate that may have affected  
18 compliance with subdivision (b) of Section 41980.

19 (3) Other information that the jurisdiction may provide that  
20 indicates the effectiveness of the jurisdiction's programs, such as  
21 waste generation studies, or other jurisdiction-specific information.

22 41986. In determining whether or not to issue penalties pursuant  
23 to Section 41850, the board's determination regarding  
24 implementation shall also be based upon the city, county, or  
25 regional agency's implementation of the programs required by a  
26 compliance order issued in accordance with Section 41985.

27 41987. The board shall provide technical assistance and  
28 outreach to assist jurisdictions to comply with Section 41980, in  
29 accordance with subdivision (d) of Section 40912.

30 SEC. 4. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 a local agency or school district has the authority to levy service  
33 charges, fees, or assessments sufficient to pay for the program or  
34 level of service mandated by this act, within the meaning of Section  
35 17556 of the Government Code.